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C O N F I D E N T I A L SECTION 01 OF 02 MAPUTO 000970

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SUBJECT: COURT DISQUALIFIES SIX PRESIDENTIAL CANDIDATES

Classified By: A/DCM Matthew Roth, Reasons 1.4(b+d)

¶1. (C) SUMMARY: On August 20 PolOff met with the leaders of two of the six political parties disqualified from participating in the October 28 presidential election under a decision by Mozambique's Constitutional Council (CC), a Supreme Court-equivalent. Its decision, not subject to appeal, dismissed as irregular many of the 10,000 petition signatures required of candidates, leaving only three to contest the October 28 Presidential Elections: President Armando Guebuza of FRELIMO, RENAMO leader Alfonso Dhlakama, and Democratic Movement of Mozambique (MDM) head Daviz Simango. None of those disqualified was given notice or an opportunity to respond, contravening Mozambican law and past practice. Both candidates interviewed pointed to undue influence by the current executive and ruling FRELIMO party over the judiciary. It may be that the party is so concerned about the possibility of President Guebuza not getting 50 percent of the popular vote which would trigger a runoff that FRELIMO party leaders are calculating that fewer candidates in the first round is to FRELIMO's advantage. END SUMMARY.

PIMO's ALLEGATIONS

¶2. (C) Resplendent in a teal caftan and matching turban, and occasionally brandishing an ornate, carved staff which he uses for emphasis, not physical support, Ya-Qub Sibindy, President of the Independent Party of Mozambique (PIMO), cuts a striking figure, though his success as a presidential candidate has been less impressive. Sibindy garnered few votes in the 1994 presidential election and was disqualified in 1999. (NOTE: In 1999 he was granted timely notice of the signature irregularities alleged and permitted to respond. END NOTE.) He also inspired little support among voters in the 2004 election. Sibindy suggested several possible reasons for the disqualification of the six presidential candidates. Sibindy said he believes the ruling FRELIMO party seeks to discourage participation in the presidential election in order to reduce turnout for the simultaneous legislative elections. Fewer voters for the parliamentary elections may support FRELIMO efforts to attain an absolute majority in the National Assembly. Sibindy also indicated that the current president of the CC, Luis Antonio Mondlane, who presided over the tribunal which disqualified PIMO prior to the 1999 elections and dislikes Sibindy, may have had personal motives in pushing through the disqualification. Sibindy had no explanation for why the CC would allow the two greatest threats to FRELIMO, RENAMO and the MDM to remain in the race, while disqualifying lesser parties.

PDD's MORE MEASURED RESPONSE

¶3. (C) A combat veteran and attorney who also

participated in the peace negotiations which ended Mozambique's long civil war, Raul Domingos, President of the Party for Peace, Democracy and Development (PDD), came in third, albeit by a large margin, in the 2004 presidential election and is widely regarded as a thoughtful candidate. He expressed fear for Mozambique's future, noting that the country is headed toward autocracy and a one-party dictatorship, while voicing puzzlement at the CC's action. He denounced as patently illegal the CC's failure to provide notice of signature irregularities and opined that, had current President Guebuza's petition fallen short of the 10,000 signature minimum, the CC surely would have given the statutorily required notice and opportunity to respond, as it had prior to the 2004 election. Domingos said the CC has as its mandate protection of the law, and openly flouting it cheapens the institution and raises grave doubts about the body's independence and respect for the rule of law. Like Sibindy, Domingos believes that the judiciary is subject to control by the executive branch.

WHAT TO DO

¶4. (C) Neither candidate had much hope that the CC's decision would be reversed and both acknowledged the absence of formal appellate process. Sibindy hoped that President Guebuza, whom, devoid of irony, he described as the ultimate arbiter of legality in the country, might overturn the CC's ruling. He also believed that Guebuza might heed complaints from the donor community, since foreign assistance constitutes more than 50 percent of Mozambique's budget.

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Domingos was less optimistic. President Guebuza swore an oath to uphold the Constitution, he said. Since the CC acted illegally, the Chief of State must honor that oath and invalidate the decision. But despite the clearly unlawful nature of the CC's decision, Domingos held out little hope for a legal resolution; rather, he expected to appeal to public opinion through the press, lay out his procedural arguments there, and then focus his efforts on the PDD's candidates for provincial and legislative office.

COMMENT: POLITICAL SPACE CONTINUES TO SHRINK

¶5. (C) Few believe that President Guebuza will not be re-elected. Most informed observers think that FRELIMO holds considerable sway over the judiciary and that the legislature does little to influence policy or counterbalance the power of the executive. Since the CC's decision is not subject to appeal or review, it's impossible to tell whether its decision to reject selected signatures was valid. Its failure to follow applicable law, particularly since it had done so in the past, does raise questions and portends continued domination by FRELIMO of political space in Mozambique. While it is also difficult to determine the extent of FRELIMO involvement in the move, it may be that the party is so concerned about the possibility of President Guebuza not getting 50 percent of the popular vote in the election--*triggering a runoff in which FRELIMO might lose--*that party leaders are calculating that fewer candidates in the first round is to FRELIMO's advantage.
CHAPMAN